



7/11/06
APR 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

Atty Dkt. 3598-2

C# M#

McINTYRE

TC/A.U.: 3624

Serial No. 09/828,226

Examiner: D. Felten

Filed: April 9, 2001

Date: April 5, 2006

Title: RANGE BID MODEL

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences

from the last decision of the Examiner twice/finally rejecting applicant's claim(s). \$500.00 (1401)/\$250.00 (2401) \$

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application \$500.00 (1402)/\$250.00 (2402) \$ 250.00

☐ Credit for fees paid in prior appeal without decision on merits -\$ ()

☐ A reply brief is attached. (no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
One Month Extension \$120.00 (1251)/\$60.00 (2251)
Two Month Extensions \$450.00 (1252)/\$225.00 (2252)
Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)
Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on -\$ ()

TOTAL FEE ENCLOSED \$ 250.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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APPEAL BRIEF

Sir:

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from
the last decision of the Examiner.

04/06/2006 SZEWDIE1 00000011 09020226

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McINTYRE
Serial No. 09/828,226

(I) **REAL PARTY IN INTEREST**

The real party in interest is Kevin A. McIntyre.

(II) RELATED APPEALS AND INTERFERENCES

The Appellant and the undersigned are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

(III) STATUS OF CLAIMS

Claims 1, 2, 4-7, 9-21 and 25-30 are pending and have been rejected. No claims have been substantively allowed.

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(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the last rejection.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a bidding model, joining buyers and sellers over a global network such as the Internet and, more particularly, to a range bidding model incorporating a market element for setting prices. The seller side process is described with reference to the flowchart of FIG. 2. Using a computer or like system, the potential seller accesses the global network and requests an appropriate protocol and URL. In step S2, the user selects a desired subject area, examples of which are shown in FIG. 2 at S2-1. As prompted by the server system, in step S3, the seller inserts a price range bid, e.g., a lower limit, expiration date, quantity, quality and other relevant parameters corresponding to the selling product or service. The central server system then looks for a range bid overlap with a potential buyer (step S4), and if an overlap is found (YES in step S5), the central controller or server system divides or splits the overlap region to arrive at a price point (step S6). Subsequently, a tracking number is added, and the transaction becomes binding (step S7). Funds received from the buyer's account are placed in the seller's account (step S8), and the transaction status is changed to "COMPLETED" (step S9). In step S10, a purchase confirmation is transmitted to the buyer, preferably by email or the like. See paragraph [0032].

In the event that the central controller does not find an overlap between the seller's bid range and the buyer's bid range (NO in step S5), both a buyer and seller can be notified and requested to make adjustments to the respective bids. In this context, the system is preferably provided with provisions to prevent one party attempting to "game" the system by trying to discover the other's limit price. Alternatively, the seller and

buyer may elect to investigate the difference in bid prices and arrive at a mutually satisfactory conclusion. See paragraph [0033].

A range of ranges can be selected to allow the model to run over time. The range of ranges allows a bidder and/or seller to automatically change a price range by a certain amount per unit of time. As a seller, for example, one party may instruct the model to reduce the minimum by a certain amount of each of several periods of time (e.g., \$10.00 every 12 hours) until a match is made or until the product is no longer available. This "range of ranges" concept is allowed as a convenience to either party, recognizing that supply and demand market forces are constantly changing. For example, in an airline context, a traveler may become slightly more desperate to secure travel plans with time. See paragraph [0034].

FIG. 3 is a flow chart showing the buyer-side process according to the present invention. In step S20, a potential buyer accesses the Internet via a particular protocol and URL using a computer or like system. The potential buyer may access the particular site via a "chat room" S20-1 or the like. In step S21, the potential buyer selects a desired subject area, examples of which are shown at S21-1. The buyer is then prompted to input a price range bid, expiration, quantity, quality, credit card information and any other pertinent parameters relating to the desired product or service (step S22), and the central controller looks for a range bid overlap with a potential seller (step S23). If an overlap is found (YES in step S24), according to the present invention, the central controller splits or divides the overlap region to arrive a price point (step S25). In step S26, a tracking number is added, and the transaction becomes binding. Funds are removed from the

buyer's account and placed in the seller's account (step S27), and the transaction status is changed to "COMPLETED" (step 28). In step S29, a purchase confirmation is transmitted to the seller via email or the like. See paragraph [0035].

The process carried out by the server or central controller will be described with reference to the flow chart of FIG. 4. In step S40, the central controller extracts a price point from a determined overlap region of range bids. Preferably, the price point is selected at a point midway between overlapping bids. The server then requests a merchant approval code for the transaction from the indicated credit card clearinghouse (step S41). If the approval code is received, designating that credit is sufficient (YES in step S42), and the time restriction for either party has not expired (NO in step S43), the controller accepts and processes the transaction (step S44). See paragraph [0038].

An example of the range bid model according to the invention is described with reference to FIGS. 5 and 6 in paragraph [0040].

Referring to FIG. 6, if the buyer upper limit is, for example, \$250.00, and the seller lower limit is, for example, \$300.00, a \$50.00 shortage region exists. As described above, in this instance, the buyer and seller may be asked to adjust their bids accordingly or terminate the transaction. Alternatively, if both the buyer and seller agree, the shortage region can be displayed to each party along with a proposed theoretical price point, midway between the buyer upper limit and the seller lower limit (\$275.00 in the example of FIG. 6). See paragraph [0042].

In an alternative operating mode, if both parties to the transaction are agreeable, each party may be limited to only one bid per item/application. Consequently, both

parties will be forced to be more realistic in making a bid, thereby increasing the likelihood of establishing an overlap region right away. See paragraph [0048].

The range bid model may also include, as a proprietary asset, the database of information derived from running any application, for example, including the database of price points, theoretical price points from the shortage region, rates of change and step size of bids in the range of ranges. This information could be used to analyze buyer and seller behavior for the purpose of setting price points for similar goods and services sold outside of the model. It would also be very useful in establishing targeted advertising. See paragraph [0049].

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 2, 4-7, 9-21 and 25-30 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al.

(VII) ARGUMENT

Claims 1, 2, 4-7, 9-21 and 25-30 are not unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al.

With reference to the Office Action, all of the independent claims have been rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al. As is clear from the file history, this Office Action represents the sixth Action on the merits in the subject application. In this sixth Office Action, the cited Rickard patent is no closer to the subject matter of the claimed invention than any of the previously-cited references.

The Rickard patent references satisfaction zones based on multiple transaction parameters, then attempts to find a discrete point where opposing party zones overlap. The system defines/assembles special and complex products and deals for those with special needs. The system then attempts to build markets and finally to define terms that are agreeable to all parties in a transaction. In contrast with the subject matter of the claimed invention, as discussed in more detail below, Rickard lacks any teaching or suggestion of what to do in the event the terms are not agreeable to all parties (i.e., there is no overlap), and Rickard additionally lacks any teaching or suggestion of bids or selling prices that vary with time.

Independent claim 1 defines method steps including receiving a lower limit price for a product from the seller, and receiving an upper limit bid for the product from the buyer. Claim 1 specifies that if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the computer system processes the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

With regard to the theoretical price point, the Office Action seems to appreciate that Rickard lacks a teaching of this feature of the invention (“Rickard disclose a maximum point but fails to disclose a price point per se.”). Although this concept of the invention is very clearly a core feature of the invention, as evidenced by the discussion of this feature of the invention in each of the five previous responses to Office Actions where this feature of the invention was lacking in the cited references, the Examiner dismisses this subject matter as “an obvious expedient.” In particular, the Office Action provides that “[s]ince the maximum point is related to mutual satisfaction and that one of the parameters for mutual satisfaction is price for a trades security, it would have been obvious . . . to incorporate price as one of the variables that the system would use to determine the negotiations between parties (particularly when trading securities).” The Rickard patent, however, does not support this contention.

Appellant does not disagree that one of the parameters for mutual satisfaction is price in any transaction. Claim 1 of the present application, however, embodies a scenario where no overlap region exists and thus “mutual satisfaction” on the original parameters is entirely unreachable (i.e., the buyer upper limit bid, which is the buyer’s maximum, does not exceed the seller’s lower limit price, which is the seller’s minimum). The Office Action concludes that “an artisan at the time of the invention would employ such a variable being a notoriously old and well known negotiable feature which is conventionally used within the art” and concludes that this feature of the invention “would have been an obvious expedient to one of ordinary skill in the art.” Appellant respectfully disagrees with this conclusion.

The Rickard patent purports to provide a method and system that calculates a mutual satisfaction between negotiating parties and maximizes the mutual satisfaction over a range of decision variables. See, e.g., column 2, lines 54-59. A computer calculates decision variable values yielding a maximum mutual satisfaction and provides this output to the parties. See column 3, lines 9-11. In the Detailed Description, Rickard provides that “[i]n its broadest sense, the present invention is a tool that can discover areas of overlap in negotiating positions between parties having a mutual desire to enter into some type of agreement.” See column 5, lines 24-31. In contrast with this clearly stated “broadest concept” of the Rickard patent, the invention defined in claim 1 is a negotiating tool that can facilitate a transaction when there are no areas of overlap. In continuing with this theme in the Rickard patent, Rickard provides that “the system calculates the mutual satisfaction by determining the area of overlap between the joint satisfaction function and the offering party's satisfaction function.” Column 6, lines 7-10.

With reference to the steps outlined in Fig. 12 of Rickard, Rickard describes a method for automatically determining a set of terms of an agreement based on the noted degrees of satisfaction. In step 127, an agreement according to this set of terms and decision variables is automatically executed. Column 6, lines 19-43. This automatic execution is in direct contrast with the theoretical price point defined in claim 1 as the theoretical price point is defined outside of any buyer or seller parameter when no overlap region exists. Since the theoretical price point is above the buyer's upper limit bid and below the seller's lower limit price, using the Rickard system, the degree of satisfaction for each party at the theoretical price point would presumably be 0. As such,

the Rickard system would be unable to process such a transaction. Moreover, Rickard describes a securities trading example with reference to Fig. 17 where a composite function represents a mutual degree of satisfaction to execute a particular trade. After determining an absolute maximum value of the composite function, a region about the absolute maximum value of the composite function is defined, and in step 173, a trading price, a trading volume and a trading party are determined for each of the different securities so that a resulting value of the composite function lies within the region defined in step 172. See column 7, line 9 - column 8, line 9. Again, it is critical that the sale parameters in the Rickard patent lie within the satisfaction region, and Rickard is silent with regard to parameters that lie outside of any such region such as the theoretical price point set by the system of the present invention when an overlap region does not exist.

Independent claims 19 and 20 define related features.

Independent claim 13 defines a step of receiving a lower limit price range from the seller that varies with time, and if an overlap region exists between the seller lower limit price range based on time and the buyer upper limit bid, a price point is set for the product within the overlap region that is based on the lower limit price and the upper limit bid. Claim 14 defines related subject matter from the buyer's perspective, defining steps of receiving a lower limit price for a product from the seller, and receiving an upper limit bid range from the buyer that varies with time. Claim 25 defines related features. Although these independent claims are included in the general discussion of the Rickard patent, there is no reference to any teaching or suggestion in this general discussion of subject matter in the Rickard patent that even remotely meets these features of the

invention. In fact, Appellant submits that Rickard lacks any teaching or remote suggestion of such subject matter.

In a related context, however, the Office Action references dependent claims 15 and 16, which define a step of additionally receiving an expiration relating to the product and by receiving a lower limit price range from the seller that varies with time to the expiration, and additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time to the expiration, respectively. The Office Action references particular sections in the Rickard patent that purportedly meet these features of the invention. As noted, however, these sections do not in any manner teach or remotely suggest this important feature of the invention.

Figure 13 in Rickard depicts an exemplary method for automatically determining trading prices, volumes, and trading parties to a simultaneous trade of different securities. Nowhere in Figure 13 does Rickard reference any price or bid range that varies with time. The Abstract is similarly silent. Column 2, lines 60-65 merely summarily references automatic negotiating where a computer accepts a satisfaction profile from an offering party who defines his degree of satisfaction to agree to a range of terms upon which the party is desirous of negotiating as a function of the relevant decision variables. Even if somehow it can be concluded that 'time' is embodied in the "range of terms," nowhere does this section or any section in the Rickard patent suggest that a price or bid varies over time. Column 3, lines 12-53 is similarly silent rather referencing terms such as cost, volume, parties, etc. Column 6, lines 4-18 references the system calculation of the satisfaction function and the determination of a maximum point for mutual satisfaction,

which establishes the terms for each of the parties. Column 7, lines 28-33 references a simultaneous trade of different securities, where data is mapped into a function expressing degrees of satisfaction over a desired range of costs. It is clear from this discussion that this “range of costs” relates to the different securities and does not in any manner reference a range for a bid or price that varies with time. Finally, column 8, lines 10-19 describes predetermined criteria for selecting trading data such as trading volume, trading price, etc. This section similarly lacks even a remote reference to a seller’s price or buyer’s bid that varies with time.

With regard to claim 17, step (b) of claim 17 defines the step of receiving an upper limit bid for the product from the buyer, wherein step (b) is practiced by allowing only one bid for the product from the buyer. Although claim 17 is included in the rejection and the general discussion of the Rickard patent, the Office Action does not reference a single teaching in the Rickard patent that meets this feature of the invention. In this context, the Rickard patent does not describe a typical transaction between a buyer and a seller. Rather, as discussed above, the Rickard method utilizes a satisfaction function among multiple parties and multiple transaction parameters. Since such a system is entirely diverse to that of the claimed invention, nowhere does the Rickard patent reference a scenario where a buyer is permitted only one bid for a product.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

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Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid;

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid; and

(e) if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the computer system further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

2. A method according to claim 1, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, step (d) is practiced by setting the price point for the product at a midpoint of the overlap region.

4. A method according to claim 26, wherein step (e) is practiced by terminating the transaction.

5. A method according to claim 26, wherein step (e) is practiced by notifying the seller and the buyer that an overlap region does not exist and requesting the seller and the buyer to either (1) adjust the respective lower limit price and upper limit bid, or (2) terminate the transaction.

6. A method according to claim 5, further comprising, after step (e), either (1) receiving an adjusted lower limit price and an adjusted upper limit bid and repeating steps (c)-(e), or (2) receiving an instruction to terminate the transaction.

7. A method according to claim 5, further comprising, after step (e) receiving one of an adjusted lower limit price or an adjusted upper limit bid, and repeating steps (c)-(e).

9. A method according to claim 1, wherein step (e) is practiced by setting a theoretical price point at a midpoint between the lower limit price and the upper limit bid.

10. A method according to claim 1, further comprising providing the seller and the buyer with an opportunity to agree on the theoretical price point, completing the transaction only if both the seller and the buyer agree on the theoretical price point, and otherwise terminating the transaction.

11. A method according to claim 10, further comprising providing a component for preventing gaming of the system.

12. A method according to claim 1, wherein step (e) is further practiced by displaying a shortage region representing a difference between the lower limit price and the upper limit bid to the seller and the buyer.

13. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price range from the seller via the global network that varies with time, the buyer being unaware of the seller's lower limit price range;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) the computer system comparing the seller lower limit price based on time and the buyer upper limit bid; and

(d) if an overlap region exists between the seller lower limit price based on time and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

14. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid range from the buyer via the global network that varies with time, the seller being unaware of the buyer's upper limit bid range;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid based on time; and

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid based on time, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

15. A method according to claim 1, wherein step (a) is practiced by additionally receiving an expiration relating to the product and by receiving a lower limit price range from the seller that varies with time to the expiration.

16. A method according to claim 1, wherein step (b) is practiced by additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time to the expiration.

17. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network;

(b) receiving an upper limit bid for the product from the buyer via the global network, wherein step (b) is practiced by allowing only one bid for the product from the buyer;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid; and

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

18. A method according to claim 1, further comprising compiling a database of information relating to sellers, buyers, products and price points.

19. A computer system for conducting a transaction between a buyer and a seller, the computer system comprising:

at least one user computer running a computer program that effects input information relating to one of a lower limit price for a product from the seller or an upper limit bid for the product from the buyer, wherein the buyer is unaware of the seller's lower limit price and the seller is unaware of the buyer's upper limit bid; and

a system server running a server program, the at least one user computer and the system server being interconnected by a computer network, the system server receiving the input information and processing the input information with information from other user computers by comparing the seller lower limit price and the buyer upper limit bid, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the server setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid, and wherein if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the server further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

20. A computer program embodied on a computer-readable medium for conducting a transaction between a buyer and a seller, the computer program comprising:

means for receiving a lower limit price for a product from the seller, the buyer being unaware of the seller's lower limit price;

means for receiving an upper limit bid for the product from the buyer, the seller being unaware of the buyer's upper limit bid; and

means for comparing the seller lower limit price and the buyer upper limit bid, wherein if an overlap region exists between the seller lower limit price and the buyer

upper limit bid, the comparing means comprises means for setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid, and wherein if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the comparing means comprises means for further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

21. A computer program according to claim 20, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the setting means sets the price point for the product at a midpoint of the overlap region.

25. A method of conducting a transaction between a buyer and a seller over a global network with a computer system for exchange of a product of decaying value, the method comprising:

(a) receiving a lower limit price for the product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) receiving an expiration relating to the product and receiving at least one of a lower limit price range from the seller via the global network or an upper limit bid range from the buyer via the global network that varies with time to the expiration;

(d) the computer system comparing the seller lower limit price and the buyer upper limit bid relative to time; and

(e) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid and completing the transaction.

26. A method according to claim 17, further comprising (e) if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, further processing the transaction according to predefined parameters.

27. A method according to claim 13, further comprising compiling a database of information relating to sellers, buyers, products and price points.

28. A method according to claim 14, further comprising compiling a database of information relating to sellers, buyers, products and price points.

29. A method according to claim 17, further comprising compiling a database of information relating to sellers, buyers, products and price points.

30. A method according to claim 25, further comprising compiling a database of information relating to sellers, buyers, products and price points.

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(IX) EVIDENCE APPENDIX

(NOT APPLICABLE)

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(X) **RELATED PROCEEDINGS APPENDIX**

(NOT APPLICABLE)